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Federal-State Joint Board on Universal Service; Comments on Joint Board *Second Recommended Decision*	)	CC Docket 96-45 DA 98-2410

REPLY COMMENTS OF THE VIRGIN ISLANDS TELEPHONE CORPORATION

The Virgin Islands Telephone Corporation ("Vitelco") hereby submits these reply comments in response to the comments initially submitted in accordance with the Common Carrier Bureau's *Public Notice*[1] seeking comment on the *Second Recommended Decision* released by the Federal-State Joint Board on Universal Service.[2] Through Section 254 of the 1996 Telecommunications Act, Congress has directed the Commission to establish policies and mechanisms that will guarantee affordable rates to *all* Americans, particularly those in high cost, insular and rural areas.[3] Further, because each state has varying abilities to shoulder the responsibility of making rates affordable, the *federal* mechanism must be national in scope and focus. Without a national perspective, the result would be to create a set of state

1 *Public Notice*, "Common Carrier Bureau Seeks Comment on Universal Service Joint Board's *Second Recommended Decision*," DA 98-2410 (rel. Nov. 25, 1998).

2 Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Second Recommended Decision*, FCC 98J-7 (rel. Nov. 25, 1998) ("*Second Recommended Decision*").

3 *See* 47 U.S.C. § 254(b).

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telecommunications "haves" versus a set of state telecommunication "have-nots." Thus, Vitelco asks that the Commission design the policies with a national scope and focus, adopt the hold harmless policy, and provide sufficient support to those states that cannot internally generate the funds needed to guarantee affordable rates for their citizens.[4]

I. THE FCC MUST KEEP IN MIND THE FUNDAMENTAL PURPOSE AND GOAL OF UNIVERSAL SERVICE – AFFORDABLE SERVICE FOR ALL AMERICANS

The task before the FCC is difficult. Congress mandated that it do two seemingly conflicting things to promote universal service. On the one hand, Congress has called on the Commission to create a "pro-competitive, de-regulatory national policy framework" for the telecommunications industry that relies upon competitive forces to set prices and develop services.[5] On the other hand, Congress also required the Commission to create a set of support mechanisms to prevent the possibility that the market may not maintain service at affordable prices in high cost, rural and insular areas of the country.

It is only natural that, given these potentially conflicting goals, the Commission's requests for input from the telecommunications industry have produced widely varying advice that is designed to protect narrow self-interest. This self-interest is particularly evident in the comments of some of the state public utility commissions that do not apparently want consumers

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[4] Vitelco recognizes that the FCC may decide that this proceeding only addresses non-rural carriers. Nevertheless, Vitelco, an insular and rural carrier, is concerned that the FCC might choose to adopt the same rules for both rural and non-rural carriers. Therefore, Vitelco is participating in this phase of the universal service proceedings in order to protect its interests.

[5] H.R. Conf. Rep. No. 104-458, at 1 (1996).

in their states to shoulder a fair share of the national universal service responsibilities,[6] ignoring the fact that such an approach would create distinct sets of states that are either telecommunications "haves" or "have nots." In an environment such as this it would be easy to become lost in the minutia and lose the forest because of the trees. It is essential that the FCC's framework for universal service promote the central purpose of universal service: to ensure affordable service for consumers in high cost, rural and insular areas.

This central purpose of universal service is embodied in the 1996 Act. Section 254(b) of the 1996 Act requires the Commission to develop its universal policies to ensure that "[q]uality services [are] available at just, reasonable, and *affordable* rates."[7] The congressional history of this provision demonstrates that the affordability element is essential to universal service.[8] In short, it is important to remember, as the Rural Telephone Coalition ("RTC") puts it, that "[t]he goal of Section 254 is to insure that service in rural areas is comparable in price, quality and offerings to the service enjoyed by non-rural consumers."[9]

However, in order to gain the full economic benefit of universal service, FCC policies cannot be administered within a single state's borders or a specific region or area of the country.

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6 *See* Comments of California at 6-7; Comments of the Joint State Commissions (Maryland, Connecticut, Delaware, Illinois and Massachusetts Regulatory Agencies) at 9-10; Comments of the District of Columbia PSC at 4-5; Comments of the Mass. Dept. of Telecommunications and Energy ("MDTE") at 2. This is not to say, however, that Vitelco is free from the influence of self-interest. However, Vitelco's interests dovetail exactly with the interests of Congress as manifested in Section 254 – the provision of affordable telecommunications services for customers in its high cost, rural and insular areas.

7 47 U.S.C. § 254(b)(1) (emphasis added).

8 *See* S. Rept. No. 104-23, at 5 (1995).

9 Comments of the Rural Telephone Coalition at 5-6 ("RTC").

Rather, the benefits of universal service depend upon *nationwide* accessibility and affordability. A subscriber in New York does not obtain the full economic benefits of the telecommunications system if, for example, persons and businesses in Wyoming or Alaska do not have access to the system. Further, those same benefits do not flow to that New York subscriber if those same people in Wyoming or Alaska cannot afford to connect to the system. In other words, the benefits of universal service do not stop at a state's borders. Section 254 codifies the national scope of the universal service program. Section 254(b) of the Act specifically states that the Commission's policies should ensure that "*all regions* of the Nation" enjoy "[a]ccess to advanced telecommunications and information services"[10] and that "[c]onsumers in *all regions* of the Nation" enjoy these services at "reasonably comparable" rates.[11]

These statutory dictates directly contravene the arguments of some parties attempting to limit the scope of the federal universal service program to that within a state's borders. For example, the California Public Utilities Commission argues that rates should only be comparable within a state.[12] The Massachusetts Department of Telecommunications and Energy raises concerns that wealth will be transferred from low-cost states to high-cost states.[13] These arguments ignore the fact that accessibility and affordability are required in *every* state and territory and *every* rural and insular region of the country if any benefit is to be gained from the policy of universal service. In short, because the benefits of universal service do not stop at a

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10 47 U.S.C. § 254(b)(2) (emphasis added).

11 47 U.S.C. § 254(b)(3) (emphasis added).

12 *See* Comments of California at 3.

13 *See* Comments of MDTE at 2.

state's borders, it is only reasonable and logical (as well as legally required under Section 254) that the responsibility to support such a national system likewise does not stop at those borders.

II. IT IS VITAL TO THE SUCCESS OF UNIVERSAL SERVICE THAT THE FCC, IN ACCORDANCE WITH SECTION 254, HOLD CARRIERS AND STATES HARMLESS

Some commenters noted that an approach that, at a minimum, maintains current universal service benefits is vital to preserve the benefits and successes of the universal service high cost program.[14] Many jurisdictions, such as Alaska, Wyoming, and the U.S.V.I., require a *federally* supported high cost fund to offset the costs of providing service in their territory. The Federal-State Joint Board's hold harmless provisions were widely recognized as a workable method of preserving existing support flows and should be adopted.[15] Further, the record supports the Board's recommendation that the federal universal service program must make up the difference when a state cannot internally generate the funds required to maintain affordable rates.[16]

As has been stated in earlier pleadings by Vitelco, the U.S. Virgin Islands require *federally* provided high cost assistance.[17] First, the rates and costs faced by the territory are high. The residential ratepayers of the U.S. Virgin Islands currently pay rates that are approximately

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[14] *See* Comments of RTC at 9-10.

[15] *See* Comments of GTE Corp. at 22-23; Comments of National Exchange Carriers Assoc. at 2-3; Comments of Puerto Rico Telephone Company at 1-2; Comments of SBC Communications Inc. at 6; Comments of United States Telephone Assoc. at 9-10.

[16] *See* Comments of the Arkansas, Kansas, Maine, Montana, New Hampshire, New Mexico, Vermont and West Virginia State Regulatory Agencies ("Arkansas, *et al.*") at 2; Comments of Wyoming Public Service Commission at 2; Comments of RTC at 10-12.

[17] *See* Comments of Virgin Islands Telephone Corporation, 5-6 (filed Dec. 23, 1996) (CC Docket 96-45; DA 98-2410) ("Vitelco").

thirty-five percent higher than the national average. The difference in business rates is even more staggering, just over fifty-three percent higher.[18] These high rates are due to the high cost of providing service in the territory. For example, the U.S. Virgin Islands are not accessible through the efficient transportation networks that exist on the mainland, any manpower, equipment, and materials necessary for the provision of service must be shipped into the territory at a much higher cost.[19] These high costs along with the economic conditions on the Islands[20] are factors that explain why telephone penetration rates in the U.S. Virgin Islands lag well behind the U.S. national average.[21]

Second, some states cannot generate the seventy-five percent funding requirement from internal sources. For example, in the U.S. Virgin Islands, there is *no intrastate toll service in the territory to allow the territorial Commission to generate additional funding to subsidize high-cost local service.* As Vitelco noted in its comments, without this particular source of funding available to it, the only means by which the territorial Commission can supplement federal

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18 The national average for local, unlimited calls is $13.70 for residential and $32.54 for business. *See* Trends in Telephone Services, Industry Analysis Division, FCC (Feb. 1998). In the U.S. Virgin Islands, however, those rates are $18.55 and $49.85, respectively.

19 *See* Comments of Vitelco at 5-6.

20 The Island's cost of living is 30% higher than the U.S. national average and the average disposable income is only 60% of that of the United States. Further, almost a quarter of the population in the U.S.V.I. live below the poverty line. *See* Comments of Vitelco at 7.

21 The U.S. enjoys telephone penetration rates of nearly 94 percent while the Virgin Islands has a penetration rate of approximately 87 percent. The FCC has noted that "subscribership levels provide relevant information regarding whether consumers have the means to subscribe to universal service and, thus, represent an important tool in evaluating the affordability of rates." *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8838 (1996).

funding is to increase the rates of the telephone subscribers on the Islands.[22] One factor further complicating this approach is the fact that the subscriber base on the Islands is small, about 60,000 local loops. Thus, any increased funding requirement would hit every ratepayer hard because the additional funding requirement could not be widely dispersed. This would only aggravate the problems described above discussing the already high rates and the current low penetration levels.

The bottom line of the above facts is that without the federal assistance currently provided to the U.S. Virgin Islands, the nation would lose the tangible benefits that flow from the inclusion of this territory on the network. Other high cost rural and insular companies share similar financial and operating characteristics which justify eliminating the current 25/75 funding split and replacing it with substantial federal funding.[23]

III. CONCLUSION

The Commission has been bombarded with pages of conflicting advice and comment in this proceeding. In the midst of this cacophony, the FCC should not lose sight of the fundamental purpose of universal service – make telecommunications accessible and affordable to all Americans in all regions of the country. Therefore, Vitelco simply asks the Commission to

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22 *See* Comments of Vitelco at 7-8.

23 *See generally* Comments of Wyoming PSC; Comments of Arkansas, *et al.* Regulatory Agencies. However, Vitelco is not recommending that the Commission act to adopt a forward-looking economic cost model at this time. Nearly every commenter in this proceeding noted that it is too early to adopt such a model as they are not sufficiently developed at this time. The FCC should continue to use the embedded cost model, at least until the FLEC model can accurately predict an individual carrier's actual costs. *See* Comments of Wyoming PSC at 3; Comments of Harris, Skrivan & Assoc. at 2.

adopt the hold harmless provisions that ensure sufficient federal funding for each state to guarantee that rates in all regions of the country are affordable. By doing so, the Commission will guarantee that the benefits of universal service will inure to all Americans.

Respectfully submitted,

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